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Juror Response to Prerecorded Videotape Trials



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by
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FOREWORD

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LESL is: (1) Subjecting existing equipment to laboratory testing and evaluation and (2) conducting research leading to the development of several series of documents, including national voluntary equipment standards, user guides, and technical reports.

This document is a law enforcement equipment report developed by LESL under the sponsorship of NILECJ. Additional reports as well as other documents are being issued under the LESL program in the areas of protective equipment, communications equipment, security systems, weapons, emergency equipment, investigative aids, vehicles and clothing.

Technical comments and suggestions concerning this report are invited from all interested parties. They may be addressed to the author or to the Law Enforcement Standards Laboratory, National Bureau of Standards, Washington, D.C. 20234.

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JUROR RESPONSE TO PRERECORDED VIDEOTAPE TRIALS

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This report is an analysis of the responses to an attitudinal questionnaire returned by 278 jurors who had participated in prerecorded videotaped (PRVTT) civil trials conducted in Ohio during 1975 and 1976. These trials differ from ordinary trials in two major respects: (1) The witnesses' testimony had been prerecorded for trial presentation and (2) the judge is not present during the videotape presentation.

The responses indicated a generally favorable reaction to the use of PRVTT. As an illustration, the respondents indicated (by a 2.4 to 1 ratio) a preference for a PRVTT over an ordinary trial in a civil suit in which they were a litigant. In contrast, there was an even split in indicated preference in the case of a criminal trial in which they were the accused.

Key words: Civil trials; courtroom procedures; juror attitudes; prerecorded videotaped trials; PRVTT; trials, PRVTT; videotaped trials.

INTRODUCTION

Video recording has proven to be an effective tool for the legal community. The legal profession has used video recording as a means of preparing witnesses and attorneys for trials, taking depositions, and obtaining demonstrative evidence such as a videotape of a malingering plaintiff engaged in strenuous activity, a re-enactment of an accident, etc. [14].¹ Videotape evidence has been accepted in both civil and criminal trials, and many courts use videotape as a visual aid. Since video recording preserves the demeanor, testimony, statements, and comments of trial participants, several court systems have used the videotape as the official court record in place of the conventional typed transcript. Recently, video recording has been used to prepare prerecorded videotape trials (PRVTTs), probably the most challenging and dynamic use of this technology in the courtroom today.

Prerecorded videotape trials were introduced in 1971. Since then the legal and scientific communities have been investigating the constitutionality issue, the behavioral factors, and the time, cost, and administrative efficiency involved in the process [5,7,8,10,14].

In his introduction to the published proceedings of a symposium on the use of videotape in the courtroom, retired Associate Justice of the U.S. Supreme Court Tom C. Clark stated, "I am told there have been well over 4000 depositions taken on videotape and that there have been several hundred trials in which videotape testimony has been used" [3].

Ohio was the first state to extend the use of videotape beyond the recording of depositions. The first of many PRVTTs was held in the Sandusky, Ohio (Erie County), Court of Common Pleas on November 18, 1971. Erie County continues to make extensive use of PRVTT on a routine basis for civil trials under Superintendence Rule 15 of the Supreme Court of Ohio [17]. Wisconsin also permits the entire trial to be videotaped, as of January 1, 1976, under the Wisconsin Rules of Videotape Procedure. The use of PRVTT was extended to criminal trials by the State of Indiana. Judge John B. Wilson, Jr., Marion County, Indiana, Criminal Court IV, held his first PRVTT in a criminal case on August 19, 1974, [18]. and continued to utilize PRVTT on a limited basis until December 31, 1978.

Judge James L. McCrystal of Erie County, Ohio, has conducted a substantial number of PRVTTs in his court. To assess juror response to these trials, he devised a questionnaire and administered it to the participating jurors. Responses were obtained from 278 of the jurors surveyed.

¹ Numbers in brackets refer to the references on page 17.

The purpose of this report is to provide an analysis of the replies to the questionnaires administered by Judge McCrystal. The information presented in this report should be of particular interest to those considering the use of PRVTT in court systems under their jurisdiction.

Recording Procedures

A major difference between a PRVTT and a live trial is the manner in which objections by counsel are handled. In a live trial, the proceedings are interrupted each time it becomes necessary for the judge to rule on testimony admissibility or other legal matters. In some cases, the jury is removed from the courtroom while a witness provides testimony subject to previous objection. In other cases, the judge sustains the objection and the witness is not permitted to answer the question. In the case of a PRVTT, all testimony is presented and counsel need not enter their objections until the testimony is completed. Each objection is ruled upon by the judge and, if the objection is sustained, that portion of testimony is not shown to the jury during the trial.

The exact manner in which the PRVTT is prepared varies somewhat from one court system to another. Erie County uses two separate video recording studios; one operated by the Erie County Bar Association, the other by the law firm of Murray & Murray. In Trumbull County, Ohio, the PRVTTs are recorded by a private contract studio. All have similar equipment. The two cameras used are located at one end of a table. The witness is seated at the other end of the table between the prosecution and defense attorneys. The camera technician has a special-effects generator, so that he can display the pictures from both cameras on the television monitor at the same time, by either the split screen or the corner insert technique. In addition, a time-date generator is used to continuously record the exact time and date of the recording.

After the witness is sworn in, he is instructed to completely answer all questions that are asked. Should either attorney object, the technician notes the time at which the objection was made. The judge is not present when the testimony is recorded. However, prior to holding the PRVTT, he reviews each tape, and rules upon each objection.

Marion County, Indiana, Criminal Court Division IV used a slightly different procedure. The witness and both attorneys were brought into the courtroom. The equipment consisted of three TV cameras, one in the center of the courtroom fixed upon the judge's bench, and one along each side of the courtroom equipped with a remote pan-and-tilt mount. All three had remotely controlled zoom lenses. The control room was separate from the courtroom. Again, use was made of a time-date generator and a special-effects generator. In contrast to Ohio practice, the judge was present during the recording of all testimony. The witness answered all questions before objections were made, and the judge ruled upon the matter at that time. If evidence was ruled inadmissible, he provided immediate instructions to the technician as to exactly what testimony was to be removed from the tape when it was prepared for presentation to the jury.

PRVTT Presentation

The proponents of PRVTT generally cite two factors as the major advantages of its use; the judge and jury know in advance exactly how long the trial testimony will last, and the verdict will not be influenced by the jury hearing testimony that has been ruled inadmissible.

The PRVTT is held in a courtroom just as if it were a live trial. Once the jury has been impaneled and the members take their seats in the jury box, the judge provides guidance to the jury to make them aware of the fact that the trial will be a PRVTT, and to verify that the individual jurors are willing to accept this type of trial without prejudice. The standard statement read by the Erie County Judge is given in appendix A. The judge then reads a second statement that further explains PRVTT and details the behavior that is expected of the jurors while they view the trial (app. B). The opening statements of the prosecution and defense are not recorded on videotape. Similar procedures were used by the Marion County, Indiana, Criminal Court for its PRVTTs.

When the PRVTT is displayed on the monitors for the jury, the judge leaves the courtroom. The trial lawyers are free to remain in the courtroom or leave as they choose; however, they are

not permitted to comment or participate in the actual trial. This procedure was used in both Ohio and Indiana.

The technical treatment of recorded inadmissible testimony was handled differently by each court system. In Ohio the video recorder technician presents the original tape to the jury, but blocks out both the video and sound portions of inadmissible testimony. In Marion County, Indiana, the technician showed an edited tape of the trial, from which the inadmissible testimony had been deleted.

The particular procedure used in presenting a PRVTT to a jury (that is, the blocking-out or the editing-out of inadmissible testimony) does not appear to have an effect upon jurors' acceptance of PRVTT. Individual court systems may wish to experiment with both procedures and select that which works best for them.

The experience to date in both Ohio and Indiana tends to indicate that one should not require the jury to concentrate on a PRVTT for much longer than one to one and one-half hours without a rest period, because the jurors have difficulty in maintaining concentration for longer periods.

Prior Research

Numerous studies have been conducted to explore the possible effects of PRVTT. Among the questions that have been addressed are the following.

- What are the jurors' attitudes?
- What are the attitudes of the judges and attorneys?
- What is the effect of including or deleting inadmissible testimony?
- What is the effect of a dual docket system (live and PRVTT) on time and administrative efficiency?
- What is the effect on jurors' retention of information?
- What is the effect on witnesses' attitudes?

Much of the data developed seems to support the general acceptability of the civil PRVTT, though many questions remain to be resolved. For example, is the constitutional right to due process being upheld? Some of the conclusions that researchers have reached include the following:

- jurors prefer PRVTT for themselves [9]
- courtroom communication between trial participants and jurors is not an issue [11]
- jurors' responses are not influenced by including or deleting inadmissible testimony [13]
- criminal PRVTTs are both just and expedient [6]
- PRVTTs quickly reduce crowded civil dockets [9]
- videotape technology is well received for demonstrative evidence and depositions [15]

CONDUCT OF THE SURVEY

Survey Sample

A four-page form containing 24 questions (app. C) was mailed to each member of a jury that had recently participated in a PRVTT presided over by Judge McCrystal. Each juror who wished to do so completed the questionnaire and mailed it back to the court. No record was kept of the number of questionnaires mailed nor of the return rate. This procedure, known as convenience sampling, does not constitute random sampling of the jurors. Since random sampling is the basis of most statistical tests, the results of the present data analysis are simply descriptive of the jurors who returned questionnaire and not of jurors in general.

Questionnaire

The questionnaire was designed to elicit feelings, attitudes, opinions, and judgments about various facets of both live and PRVTT courtroom techniques. The responses of jurors having prior live trial experience (question #1) are considered to be judgments based on that experience, while the responses of jurors without prior live trial experience are considered to be opinions. The interpretation of the responses to some questions, particularly 14 and 15, may be ambiguous because they are stated in a limiting or leading manner. For example, question 15 lists "less emotional for jurors" as a disadvantage whereas some jurors may consider this an advantage.

Data Analysis

The responses to the questionnaires were treated in two stages. First, the data were tabulated; as many of the responses as could conveniently be so treated are summarized in appendix C. It should be noted that not a single question was responded to by 100 percent of the responding jurors.

The data were then analyzed to determine whether there were any relationships between the replies to two or more questions, e.g., between the responses to a particular question and the age, sex, occupation, etc., of the jurors. Each possible relationship was stated in the form of a null hypothesis, i.e., that there was no such relationship. The chi-square statistic was then calculated to determine whether or not that stated lack of relationship was valid, with a probable error of 0.05. If the calculated chi-square was found to be too large to be accounted for by chance alone, the null hypothesis was rejected and the relationship established as statistically significant.

Characteristics of the Jurors

There was only a limited amount of demographic information on these jurors: age, sex, and occupation. The Mann-Whitney (T or W) test [16] was used to determine whether the sample of jurors could be considered a random sample drawn from the U.S. population. Using 1970 Census Bureau data for the U.S. population over age 18, the test, at the 0.05 level of significance, failed to indicate that the jurors differed from the U.S. population in occupation. Chi-square tests comparing the ages and the percentages of males versus females in the sample to that in the U.S. population also showed no significant difference at the 0.05 level of significance. These results suggest that the juror sample was a reasonable cross-section of Americans by age, occupation and sex.

The characteristics of the jurors can be summarized as follows:

- The median reported age was 46 and the average age was 45; 1 percent did not reply.
- 49 percent were males; 50 percent were females; 1 percent did not reply.
- 58 percent worked for wages; 24 percent were housewives; 10 percent were retired; 1 percent were not working; and 6 percent did not reply.

JUROR REACTION TO THE PRVTT PRESENTATION

The jurors agreed that the physical aspects and the viewing of a videotaped trial were acceptable. The overwhelming majority could clearly see the presentation at all times (88%), could see the witnesses well enough to evaluate their testimony (89%), and were satisfied with the use of the courtroom for the presentation (96%). Two-thirds (66%) of the jurors noticed people moving in and out of the courtroom but only one-quarter (23%) of them found this distracting. Even fewer (19%) said their attention wandered either "somewhat" or "quite a bit."

Most of the jurors (87%) responded to the open-ended question, "What was your response to the setting in which the testimony was recorded?" The great majority (74%) of the 278 jurors were positive towards the setting. An analysis by sex revealed that 81 percent of the men and 70 percent of the women answered positively.

Only a few of the jurors (24%) thought that color TV would improve their assessment of the testimony. Even fewer (14%) had difficulty viewing the presentation. Of those 14 percent, about half were bothered by noise in the courtroom and glare on the monitors. Some of their other difficulties were:

- poor picture quality 7 persons (2.5%)
- poor sound quality 7 persons (2.5%)
- distance from the monitor 6 persons (2.2%)
- focus of the monitor 6 persons (2.2%)
- lighting and glare 5 persons (1.8%)
- eyesight of the juror 8 persons (2.9%)
- insufficient monitors 3 persons (1.1%)
- length of videotape presentation 1 person (0.4%)

Judge Wilson of Marion County, Indiana, received similar responses during informal interviews with jurors who participated in PRVTT in his court [18]. The jurors' major complaints dealt with the quality of the photography and the sound. These jurors liked the use of the split-screen technique to simultaneously display the pictures of the persons asking and answering the questions. There was also an expressed preference for large screen display, but the picture on the smaller monitor was considered to be sharper.

JUROR REACTION TO THE USE OF PRVTT

The jurors were asked in question 18 whether, in their opinion, there was a 'significant difference' between a live trial and a videotaped trial. Half (51%) of the jurors believed there was a significant difference, 44 percent did not and 5 percent did not respond. Slightly more than half (56%) of the jurors who believed there was a significant difference were women.

In question 5 the jurors were asked whether they felt more or less involved with the witnesses than if the trial had been live. As is shown in table 1, the responses indicated that the jurors were equally divided: 48 percent felt more or the same involvement and exactly the same number felt less involved. Of those who felt less involved, 66 percent believed there was a significant difference between a live and a videotaped trial (see table 2).

TABLE 1. Jurors' feelings of involvement with witnesses (Question 5)

| Feelings of involvement | All jurors (%) |
|--------------------------|----------------|
| Less involved | 48 |
| More or same involvement | 48 |
| No response | 4 |

TABLE 2. *Relationship between jurors' feelings of involvement with witnesses and their perception of a significant difference between PRVTT and live trials (Questions 5 & 18)*

| Feelings of involvement | Perception of difference | |
|--------------------------|--------------------------------|---------------------------------|
| | Those who saw a difference (%) | Those who saw no difference (%) |
| More or same involvement | 37 | 63 |
| Less involvement | 66 | 34 |

Question 10 asked the jurors whether they perceived any difference between a live trial and a videotaped trial that affected their ability to concentrate on the testimony or on the proceedings in general. As is shown in table 3, most of the jurors favored videotaped trials: 51 percent felt that a PRVTT was less confusing and 45 percent felt that it made it easier to concentrate. On the other hand, 31 percent felt that it was easier to concentrate in a live trial, and 9 percent felt that a live trial was less confusing. Note that jurors could select more than one response to this question.

TABLE 3. *Jurors' perception of their relative ability to concentrate on the testimony in a PRVTT and a live trial (Question 10)*

| Perception of ability to concentrate | All jurors (%) |
|--------------------------------------|----------------|
| PRVTT trial— | |
| easier to concentrate | 45 |
| less confusing | 51 |
| Live trial— | |
| easier to concentrate | 31 |
| less confusing | 9 |
| No response/other | 12 |

Most (88%) of the small number of jurors who felt that live trials were less confusing and 70 percent of those who found them more conducive to concentration also saw a significant difference between PRVTT and live trials. However, the bulk of the jurors, who felt that PRVTT were less confusing and more conducive to concentration, were about evenly split in their perception as to whether there was a significant difference between PRVTT and live trials, as shown in table 4.

TABLE 4. *Relationship between jurors' perception of their ability to concentrate on the testimony and their perception of a significant difference between PRVTT and live trials (Questions 10 & 18)*

| Perception of ability to concentrate | Perception of difference | | |
|---|---------------------------------------|--|-----------------------|
| | Jurors who saw a difference (%) | Jurors who saw no difference (%) | No response (%) |
| Live trials— | | | |
| easier to concentrate | 70 | 28 | 2 |
| less confusing | 88 | 12 | 0 |
| PRVTT— | | | |
| easier to concentrate | 54 | 44 | 2 |
| less confusing | 48 | 50 | 1 |

Almost all jurors (94%) identified one or more advantages of PRVTT in response to question 14. The jurors' votes on the suggested advantages were in this order:

- less time taken in the courtroom 74 percent
- less confusing 51 percent
- easier for jurors to concentrate 49 percent
- less anxiety for the witnesses 44 percent

In contrast only 63 percent of the jurors identified one or more disadvantages of PRVTT in response to question 15. Arranged in order, the jurors' votes on the suggested disadvantages were:

- less emotional for jurors 39 percent
- more difficult for jurors to concentrate 23 percent
- jurors are not as confident in their decision 18 percent
- more confusing for the jurors 7 percent

When the responses to questions 14 and 15 were analyzed by jurors' perception of a significant difference between PRVTT and live trials (question 18), some consistency of attitude appeared. As is shown in table 5, those who saw disadvantages to PRVTT were more likely to see significant differences between PRVTT and live trials.

As noted before, the responses to questions 14 and 15 may be ambiguous because the questions were stated in a limited or leading manner. For instance, the disadvantage "less emotional for juror" may well have appeared as an advantage to many of the jurors.

TABLE 5. *Relationship between perception of advantages and disadvantages of a PRVTT and perception of a significant difference between PRVTT and live trials (Questions 14, 15 & 18)*

| Perception of advantages and disadvantages | Perception of difference | |
|--|---------------------------------|----------------------------------|
| | Jurors who saw a difference (%) | Jurors who saw no difference (%) |
| Advantages— | | |
| less time in courtroom | 55 | 45 |
| less confusing | 52 | 47 |
| easier to concentrate | 53 | 45 |
| not as anxiety provoking for jurors | 59 | 37 |
| Disadvantages— | | |
| less emotional for jurors | 47 | 52 |
| more confusing for jurors | 84 | 16 |
| difficult to concentrate | 68 | 30 |
| lack of confidence in decision | 76 | 22 |

In question 16 the jurors were asked to compare the PRVTT courtroom atmosphere to either their prior experience as jurors or their expectations of the atmosphere of a live trial. Of the 63 percent of the jurors who responded, only 13 percent (8% of all the jurors) felt that the atmosphere was worse than that of a live trial.

Generally positive attitudes towards several aspects of the PRVTT are evident from the following additional responses:

- Almost all (94%) agreed that the absence of the judge did not affect the trial in any way (question 17).
- Most (69%) did not want any other parts of the trial taped, while 13 percent gave no response (question 13).
- The 18 percent who wanted other parts of the trial videotaped gave almost equal votes to all 5 of the parts suggested in question 13.

As is shown in table 6, a majority (61%) of the jurors said they would prefer a videotaped trial if they were involved in a civil trial similar to the one they viewed. If the same jurors were the accused in a criminal trial, however, there would be an even split (41 to 40%) between those who preferred a PRVTT to those who preferred a live trial.

TABLE 6. *Juror declared preference for a PRVTT or live trial in which they were involved (Questions 19 & 20)*

| Preference | PRVTT (%) | Live trial (%) | No difference or undecided (%) | No response (%) |
|---------------------|-----------|----------------|--------------------------------|-----------------|
| In a civil trial | 61 | 25 | 8 | 6 |
| In a criminal trial | 41 | 40 | 10 | 9 |

The nearly equally divided responses of this group of Ohio jurors, who had experienced a civil PRVTT only, toward the use of PRVTT for criminal trials contrast sharply with the expressed sentiments of Indiana jurors. When Judge Wilson interviewed jurors who had participated in Indiana criminal PRVTT in his court, there was a unanimous preference for PRVTT over a live trial [18].

As is shown in table 7, most jurors who declared a preference for a live trial for themselves also felt that there was a significant difference between PRVTT and live trials. On the other hand, a majority of those who declared a preference for a PRVTT for themselves felt that there was no significant difference between PRVTT and live trials. This was true for both civil and criminal trials.

TABLE 7. *Perception of a significant difference between PRVTT and live trials among jurors who preferred one or the other type of trial for themselves (Questions 18, 19 & 20)*

| <i>Civil trial</i> | | |
|---------------------|------------------------------|-------------------------------|
| Declared preference | See a significant difference | See no significant difference |
| Live trial | 80 | 20 |
| PRVTT | 47 | 53 |

| <i>Criminal trial</i> | | |
|-----------------------|------------------------------|-------------------------------|
| Declared preference | See a significant difference | See no significant difference |
| Live trial | 73 | 27 |
| PRVTT | 43 | 57 |

A very similar picture emerges from an inquiry into the sex of those jurors who declared a preference for one or the other type of trial for themselves. Those who declared a preference for a live trial were preponderantly female while a majority of those who preferred a PRVTT were male. The data are detailed in table 8, and are similar for both civil and criminal trials.

TABLE 8. *Sex distribution of jurors who preferred a PRVTT or a live trial for themselves (Questions 19, 20 & 22)*

| <i>Civil trial</i> | | |
|---------------------|--------------------|----------|
| Declared preference | Sex of respondents | |
| | Female (%) | Male (%) |
| Live trial | 71 | 29 |
| PRVTT | 45 | 54 |

| <i>Criminal trial</i> | | |
|-----------------------|--------------------|----------|
| Declared preference | Sex of respondents | |
| | Female (%) | Male (%) |
| Live trial | 67 | 33 |
| PRVTT | 44 | 55 |

An analysis of the ages of those jurors who declared a preference for either a PRVTT or a live trial for themselves gave the results shown in tables 9 and 10. Those who preferred a PRVTT or who had no preference tended to be over 40, but those who preferred a live trial were about equally divided into the two age groups. Age 40 was chosen as the divider to permit a comparison with Bermant's results [1], discussed below.

TABLE 9. *Age distribution of jurors who stated a preference for either a PRVTT or a live civil trial for themselves (Questions 19 & 21)*

| Declared preference | Ages of respondents | |
|---------------------|---------------------|-------------|
| | 40 or under (%) | Over 40 (%) |
| Live trial | 51 | 49 |
| PRVTT | 33 | 67 |
| No difference | 36 | 64 |

TABLE 10. *Age distribution of jurors who expressed a preference for either a PRVTT or a live criminal trial for themselves (Questions 20 & 21)*

| Declared preference | Ages of respondents | |
|---------------------|---------------------|-------------|
| | 40 or under (%) | Over 40 (%) |
| Live trial | 52 | 48 |
| PRVTT | 25 | 75 |
| No difference | 33 | 67 |

RELATIONSHIPS BETWEEN PRIOR LIVE TRIAL EXPERIENCE AND RESPONSES TO SIX SURVEY QUESTIONS

The examination of all juror responses, discussed above, revealed a general acceptance of preference for PRVTT. The following section discusses the effect of prior live trial experience on juror responses.

The respondents were divided into three experience groups:

1. 224 jurors had had no prior trial experience.
2. 47 jurors had had prior live trial experience.
3. 7 jurors had had prior PRVTT experience.

The third group of 7 jurors was not included in the following analysis. The responses of the second group of 47 jurors were considered to be judgments based on experience with both PRVTT and live trials. In contrast, the responses of the first group of 224 jurors were considered to be statements based on their assumptions about how they might feel about live trials.

As is shown in table 11, the jurors with prior live trial experience were somewhat older than those without such experience, and had a slightly greater proportion of males.

TABLE 11. *Relationship between prior trial experience and the age and sex of the jurors (Questions 1, 21 & 22)*

| Prior trial experience | Average Age (years) | Percentage of males |
|------------------------|------------------------|------------------------|
| Live trial experience | 54 | 53 |
| No prior experience | 43 | 48 |
| All jurors in sample | 45 | 50 |

The six survey questions addressed in this analysis were:

- feelings of involvement with witnesses (Question 5)
- ability to concentrate (Question 10)
- courtroom atmosphere (Question 16)
- significant difference between the two types of trials (Question 18)
- preference for trial mode in a civil trial (Question 19)
- preference for trial mode in a criminal trial (Question 20)

As is shown in table 12, a clear majority of the jurors with prior live trial experience (62%) felt less involvement in a PRVTT than they had felt in a live trial. Exactly half of the jurors without prior trial experience stated that they felt more or the same involvement than if the trial had been live, while a slightly smaller percentage (44%) felt less involvement.

A majority of the jurors in both prior-experience groups indicated that it was easier to concentrate and less confusing in a PRVTT (Question 10). When asked to compare the PRVTT courtroom atmosphere to that of a live trial, both groups responded similarly in that many more jurors thought the PRVTT atmosphere was the same or better than that of a live trial, and few perceived it as worse. However, 55 percent of those with prior live experience thought this in contrast to the 44 percent of those without that experience.

On the question of significant difference between PRVTT and live trials (Question 18), the two groups differed considerably. Those with no prior trial experience were evenly split in their opinions, while the experienced jurors felt (by a 3 to 2 ratio) that there was a significant difference.

When asked if they would prefer PRVTT to live trials if they were involved in a civil case (Question 19), the majority of both experience groups voted for PRVTT while less than a third voted for live trials. There was no difference in the replies of the two experience groups.

On the question of whether they would prefer a PRVTT or a live trial if they were the accused in a criminal trial (Question 20) there was again a marked difference between the two groups. Those with prior live trial experience preferred a PRVTT to a live by a ratio of more than 2 to 1, while those with no prior trial experience were almost evenly split in their preference.

It is also of interest that the stated preferences for PRVTT and for live trials by jurors with prior live trial experience were essentially the same for civil and for criminal trials. In contrast, the replies of those without prior trial experience differed considerably for civil and for criminal trials.

While these replies are indicative, it should be noted that chi-square tests showed that the two experience groups differed from each other significantly only in their replies to question 20 concerning preference for a criminal trial.

TABLE 12. *Relationship between juror response to survey questions and their prior live trial experience*

| Questions and responses | Prior trial experience | |
|---|---------------------------|-------------------------|
| | Live trial experience (%) | No prior experience (%) |
| Feelings of involvement (Question 5) | | |
| More or same | 36 | 50 |
| Less | 62 | 44 |
| Ability to concentrate* (Question 10) | | |
| Easier to concentrate in PRVTT | 53 | 43 |
| PRVTT less confusing | 45 | 52 |
| Easier to concentrate in live trial | 36 | 29 |
| Live trial less confusing | 9 | 10 |
| Courtroom atmosphere (Question 16) | | |
| Better or same | 55 | 44 |
| Worse | 6 | 6 |
| Other comments | 14 | 12 |
| No response | 25 | 38 |
| Significant difference between PRVTT and live trial (Question 18) | | |
| Significant difference | 62 | 48 |
| No significant difference | 38 | 47 |
| No response | 0 | 5 |
| Preference in a civil trial (Question 19) | | |
| Prefer PRVTT | 57 | 62 |
| Prefer live trial | 30 | 24 |
| No difference or undecided | 6 | 8 |
| No response | 6 | 5 |
| Preference in a criminal trial (Question 20) | | |
| Prefer PRVTT | 57 | 37 |
| Prefer live trial | 25 | 43 |
| No difference or undecided | 6 | 10 |
| No response | 8 | 9 |

*Jurors could select more than one response.

RELATIONSHIPS BETWEEN AGE, SEX, OCCUPATION AND PRIOR JURY EXPERIENCE AND RESPONSES TO FIVE SURVEY QUESTIONS

The responses to questions 5, 17, 18, 19 and 20 were analyzed to determine the effect on juror response of age, sex, prior jury experience (either live or PRVTT) and occupation.

The five survey questions addressed in this analysis were:

- feelings of involvement with witnesses (Question 5)
- judge's absence from courtroom during trial (Question 17)
- significant difference between the two types of trials (Question 18)
- jurors' preference for a PRVTT or a live trial, if they were involved in a civil trial (Question 19)
- jurors' preference for a PRVTT or a live trial if they were the accused in a criminal trial (Question 20).

As is shown in table 13, the older the juror, the more likely he was to state that his feelings of involvement with the witnesses were either greater than or the same in a PRVTT as they would have been in a live trial. Conversely, the younger the juror, the more likely he was to state that his feelings of involvement were less in a PRVTT.

TABLE 13. *Relationship between jurors' ages and their feeling of involvement with witnesses (Questions 5 & 21)*

| Age of respondents | Feeling of involvement | |
|--------------------|------------------------------|----------------------|
| | More or same involvement (%) | Less involvement (%) |
| Below 31 | 29 | 71 |
| 31-40 | 44 | 54 |
| 41-50 | 40 | 53 |
| 51-60 | 62 | 33 |
| Over 60 | 72 | 26 |

Table 14 shows a similar relationship between the age of a juror and his likelihood to prefer a PRVTT to a live trial for himself if he were the accused in a criminal trial. The older the juror, the greater his likelihood to prefer a PRVTT; the younger the juror, the greater his likelihood to prefer a live trial.

TABLE 14. *Relationship between jurors' ages and their preference for a PRVTT vs. a live trial in a criminal trial in which they were the accused (Questions 20 & 21)*

| Age of respondents | PRVTT (%) | Live trial (%) | No difference (%) |
|--------------------|-----------|----------------|-------------------|
| Below 31 | 25 | 60 | 6 |
| 31-40 | 29 | 56 | 4 |
| 41-50 | 44 | 38 | 10 |
| 51-60 | 52 | 31 | 0 |
| Over 60 | 63 | 20 | 3 |

There were clear relationships between jurors' sex and their trial mode preference in both civil and criminal trials in which they were personally involved. For civil trials, both sexes preferred PRVTT, but males' preference was far stronger. For criminal trials, males preferred the PRVTT while females preferred the live trial (see tables 15 and 16).

TABLE 15. *Relationship between jurors' sex and their stated preference for a PRVTT or a live trial in a civil trial in which they were involved (Questions 19 & 22)*

| Sex | Stated preference | | |
|--------|-------------------|----------------|-------------------|
| | PRVTT (%) | Live trial (%) | No difference (%) |
| Female | 54 | 36 | 0 |
| Male | 67 | 15 | 6 |

TABLE 16. *Relationship between jurors' sex and their stated preference for a PRVTT or a live trial in a criminal trial in which they were the accused (Questions 20 & 22)*

| Sex | Stated preference | | |
|--------|-------------------|----------------|-------------------|
| | PRVTT (%) | Live trial (%) | No difference (%) |
| Female | 35 | 54 | 0 |
| Male | 46 | 27 | 7 |

COMPARISON TO EARLIER SURVEY

Using the same questionnaire, with one additional question, Gordon Bermant [1] surveyed 76 jurors in Erie County, Ohio, who had just participated in 14 land appropriation civil trials held in 1973. The major results are listed below:

- Demographic characteristics of the jurors:
 1. 55 percent male; 45 percent female.
 2. Median age = 47 years.
 3. 95 percent employed; 5 percent retired or unemployed.
 4. 32 percent had prior live trial experience and 2 percent had prior PRVTT experience.
- Favorable responses were returned on questions about camera work and viewing conditions.
- 63–70² percent reported it was easier to concentrate on PRVTT; 20 percent were slightly distracted.
- 76 percent would choose a civil PRVTT.
- 43 percent would choose a criminal PRVTT; 26 percent of those under age 40 and 65 percent of those over 40 would do so.

The results of the current study were similar to Bermant's results in most respects. The demographic characteristics of the jurors were similar, but there was a difference in the number of

² Bermant stated that this percentage varied with the context in which the question arose, but did not elaborate on the reason other than to attribute it to prior juror experience.

jurors surveyed (278 vs. 76). Also, in Bermant's study more of the people had had prior live trial experience; 32 percent versus 17 percent in this study. In both studies the reactions to the camera work and viewing conditions were favorable, and the differences between PRVTT and live trials were viewed as favorable to PRVTT. Both groups found it easier to concentrate during a PRVTT and only a few were distracted. In both studies there was a tendency for the jurors over 40 to prefer PRVTT and for the younger jurors to prefer live trials for themselves in criminal trials. In the Bermant study more jurors (76%) preferred videotape for a civil trial than did jurors in this study (61%). Juror preference for PRVTT in a criminal trial in the earlier study (43%) and in this study (44%) were essentially identical.

SUMMARY

This report gives an analysis of the data obtained in response to a survey questionnaire administered by Judge McCrystal of Erie County, Ohio.

Despite their shortcomings, these data are descriptive of how a substantial number of jurors felt about PRVTT. They give some insight into the relationships between jurors and witnesses, and certain variables which influence jurors' attitudes. One of the more interesting comparisons was between PRVTT jurors who had previously participated in live trials and those who had had no such experience.

The majority of jurors who responded to this questionnaire were very much in favor of the PRVTT technique as presented in Erie and Trumbull County courts and would prefer PRVTT in a civil trial in which they were involved. In contrast, there was no majority for either mode of presentation in a criminal trial. Perhaps requiring the respondents to assume they were the accused made it more difficult for them to answer that question. However, there was a small but consistent minority who felt less involved with the witnesses in a PRVTT and who felt that a live trial was less confusing and easier to concentrate upon than was a PRVTT. These jurors also tended to be those who felt there was a significant difference between the two trial modes. Since a large majority of the jurors had not had prior jury experience, these jurors' attitudes were not formed from direct experience with live trials. They may have been influenced by any number of unknown variables such as their attitude towards television, expectation of high emotional content or difficulty in viewing the monitor. These same jurors might have voted differently if they had seen a live trial prior to the PRVTT.

When jurors' responses were analyzed by live trial experience, there was a statistically significant difference between their trial mode preference in a criminal trial. When the responses were analyzed by the age, sex, occupation and prior jury experience of the jurors (either live or PRVTT) it appeared that only age affected feelings of involvement with witnesses. The sex of the jurors affected their preference for a civil trial mode, while both age and sex affected their preference for a criminal trial mode.

The variables of age, sex and prior live trial experience tended to affect the jurors' attitude toward PRVTT. Women jurors and jurors under 40 tended to not prefer (or to less prefer) PRVTT. The data also indicated that jurors with prior live trial experience tended to be older and male. It seems reasonable that jurors who are serving a second time would be older than jurors serving a first time. Why there would be more males than females in the experienced group is not clear.

Since the responses analyzed in this study constitute a convenience sample rather than a random sample, the results cannot be generalized to all jurors. There is a possibility, for example, that only jurors with strong opinions on PRVTT bothered to return their questionnaires. However, the results are indicative and warrant further investigation.

DISCUSSION

This exploration of jurors' reactions to PRVTT suggested that their age, sex, and prior live trial experience had an effect on their responses to the questionnaire. Future research should attempt to clarify the effect of these variables on preference for PRVTT in both civil and criminal trials by addressing the following points:

1. the effect of prior trial experience
2. the effect of jurors' age and sex
3. the effect of styles of editing and projection
4. the effect of television viewing habits
5. the expectation of differences between live and prerecorded trials.

It will be necessary to develop a more objective questionnaire and to more carefully select the juror sample. Bermant pointed to some of the same research needs in his critique of a 1975 symposium on the use of videotape in the courtroom. Additionally, he suggested the need to extend research to actual trials, to standardize the research, and to get the cooperation of all trial participants. Of most value is a testable hypothesis he tendered: "the more evenly balanced or ambiguous the legal issues on the two sides of a case, the more influential will be the extra-legal factors in the case including the medium through which the case is presented to the jury" [2].

There is no doubt, based upon this analysis, that individuals who believe there is a significant difference are more inclined to be negative to the special characteristics of PRVTT; however, this feeling does not prevent many of them from stating a preference for PRVTT for civil trials. The question is, do those who believe there is a significant difference mean the obvious, that viewing a monitor is not the same as having the witness present, or do they mean that the testimony itself is of a different character? Further, does the feeling of difference really mean a respect for the overall effectiveness of PRVTT in reducing the trial to issues of fact? This question is prompted by the fact that those who see a difference have a strong preference for a live trial if they were the accused in a criminal trial, suggesting that they may feel that the emotion associated with live testimony is to the advantage of the accused.

Similarly, it would be interesting to explore the negative attitude of younger jurors. Is their reaction due to impatience, and the feeling that video display is rather static and lacks the dynamic character of live testimony? Do they prefer the opportunity to hear the objections by counsel and the judge ruling upon these objections, and other legal maneuvering? Perhaps the younger jurors would be more receptive to PRVTT if the court improved the recording techniques, increased the variety of viewing angles and distances, and made more use of split-screen presentations or other techniques to hold the jurors' attention. Or perhaps they are biased from not having seen a live trial prior to their PRVTT experience?

The opinions of all jurors should be solicited, either by means of a questionnaire or through a structured interview. While it may not be practical from the court administrator's point of view, it would be highly desirable to schedule the docket so that a given jury participates in both live trials and PRVTTs. If at all possible, the same jury should view one or more experimental PRVTT tapes in addition to one prerecorded trial using the more standard recording techniques.

The court systems should experiment with the manner in which the PRVTT is displayed to the jury. If there is a glare on the screen from room lighting, it may be possible to shield the screen or to use more or larger monitors. It would also be interesting to use a large-screen video projection system for a series of trials to determine juror response to this method of presentation.

Those court systems using PRVTT should attempt to improve the quality of the trial tapes, particularly with respect to their sound. This may require the use of additional microphones and could require the use of lavalier microphones³ even though many attorneys dislike them. It is suggested that controlled experiments be conducted to establish the most acceptable recording

³Lavalier microphones are small microphones worn by each participant, usually on a lapel, necktie, or the collar of a blouse.

techniques. It would be desirable to vary only one factor at a time, such as making increased use of split-screen techniques during one trial, or making an effort to vary the viewing angle throughout the trial during a different trial recording. The period of time that a given scene is displayed without a change in viewing angle or image size should also be the topic of experiment.

In addition to efforts on the part of individual court systems to improve the techniques of recording and presentation, it would be desirable to develop a new standardized questionnaire that could be administered to jurors in any court jurisdiction that utilizes PRVTT. Such a questionnaire could best be developed through a series of interviews with jurors following completion of their impanelment. The questionnaire would attempt to solicit information to enable a better understanding of the relationships between jurors' characteristics and their perceptions.

Based upon the experience to date with PRVTT, there appears to be no reason why court systems should not utilize the medium to a greater extent for civil trials. Similarly, it would seem appropriate for courts to utilize PRVTT for criminal trials, at least on an experimental basis.

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APPENDIX A—Questions Presented by the Judge to the Jury

Ladies and gentlemen, as you have previously been told, all of the testimony in this case will be presented to you by videotape. There will be no witnesses testifying personally in this case. While the testimony is being shown to you, I, as Judge, will not be present in the court room. I have already reviewed the testimony and I have ordered certain objectionable questions, answers and comments of Counsel not to be seen or heard by you. During the showing of this testimony to you, the Attorneys may or may not remain in the court room. They, also, have seen and heard all of the testimony that you will see. In other words, ladies and gentlemen, you are the only participants in this trial who do not know what the testimony will produce. The question I have to address to all of you is: Will you think this case is less important because I, as Judge, am not present in the court room or because either or both of the Attorneys are not present?

Traditionally, Judges and Attorneys play an active part in a trial. In this trial, until the commencement of the closing arguments neither I nor the Attorneys have any active role to play. So, again, I ask if there are any of you who are going to feel that this case is not very important because the Attorneys and the Judge are absent, please raise your hands.

APPENDIX B—Statement to Jurors Prior to Starting Videotape

Ladies and gentlemen, the opening statements having been concluded, we will take a brief recess while the videotape equipment is being prepared for you. During the presentation of the videotape testimony you will be in charge of the Bailiff or the Operator of the equipment. They will call the recesses from time to time. During the showing of the testimony, you will conduct yourselves as you would during a live trial; that is, you will not have any conversations among yourselves while the testimony is being shown. From time to time during the testimony both the sound and the picture will not be seen or heard by you. These sequences are done by the operator under my direction so that you will not hear some questions and answers and comments of Counsel. If, during the testimony, you do hear an objection made by Counsel, you are to ignore it because that objection has either been overruled or withdrawn. You are to attach no significance if you do hear an objection made. As we know fairly accurately how long all the testimony will take, you can expect to commence deliberating on this case (this afternoon about 2:00 o'clock; tomorrow at 10:30, etc).

APPENDIX C—Survey of Jurors' Responses to Videotaped Trial Presentation

1. Have you had prior experience as a juror?

54 Yes

223 No

1 No Response

If so, when and where?

Did the prior trials involve video-tape procedures?

7 Yes

47 No

If so, please elaborate. (e.g., all testimony video-taped; only one witness on tape; etc.)

2. Could you see the television presentation clearly at all times during the trial?

246 Always

29 Usually

Seldom

Never

3 No Response

3. If you had any difficulty viewing the television presentation, which of these factors contributed to that difficulty?

3 not enough monitors

6 bad viewing distance from screen

8 poor eyesight

6 poor quality videotape

18 other (please describe)

238 no response

4. Do you feel that you could see the witnesses often and well enough to evaluate their testimony?

247 saw witnesses well enough

21 could have been better

7 was not good enough

3 no response

5. Did you feel more, or less, involved with the witnesses than you would have, had the trial been live?

19 more involved

(9 see sig. diff.) (10 see no sig. diff.)

114 same as live trial

(40 see sig. diff.) (74 see no sig. diff.)

133 less involved

(88 see sig. diff.) (45 see no sig. diff.)

1 other

11 no response

6. Do you have any comments on the quality of the camera work done in video taping this trial? For example, should there have been more close-up shots and camera angles, or more split-screen techniques employed?
 - 181 no suggestions/comments
 - 32 more close-ups
 - 18 more split screen
 - 6 more camera angles
 - 9 other
 - 39 no response
7. What was your response to the setting in which the testimony was recorded? Do you have any suggestions for change?
 - 183 positive or generally satisfied
 - 22 no change desired
 - 9 negative to setting
 - 7 comments on noise
 - 5 comments that it was informal
 - 17 other
 - 35 no response
8. Do you feel that your assessment of the trial testimony would be improved by use of color television?
 - 67 yes
 - 192 no
 - 10 other
 - 9 no response
9. Did you notice movement of people in and out of the courtroom during the television presentation?
 - 183 Yes
 - 94 No
 - 1 No response

If so, did you find it distracting?

 - 63 Yes
 - 156 No
 - 59 No response
10. In your opinion, is there any difference between a videotaped trial and a live trial affecting a juror's ability to concentrate on testimony or on the proceedings in general? (Check all the answers that apply).
 - 87 live trial easier to concentrate
(61 see sig. diff.) (24 see no sig. diff.)
 - 26 live trial less confusing
(23 see sig. diff.) (3 see no sig. diff.)
 - 124 videotaped trial easier to concentrate
(67 see sig. diff.) (54 see no sig. diff.)
 - 143 videotaped trial less confusing
(69 see sig. diff.) (72 see no sig. diff.)
 - 3 same
 - 29 no response

11. Would you have preferred to watch the television presentation in a room other than the courtroom?
- 10 Yes
 - 98 No
 - 169 Doesn't matter
 - 1 No response
- If so, why?
12. Did your attention wander during the videotaped portions of the trial?
- 7 quite a bit
 - 45 somewhat
 - 152 not very often
 - 72 not at all
 - 2 no response
13. In addition to the television presentation of witnesses' testimony, would you also have liked to see other portions of the trial on television? If so, please check which portions:
- 37 judge's opening statements
 - 26 judge's closing statements
 - 31 attorney's opening statements
 - 21 attorney's closing statements
 - 21 judge's instructions
 - 192 no additional parts taped
 - 37 no response
14. Please indicate which of these factors, if any, you feel are advantages of video-taped trials. (Check all the answers that apply).
- 205 less time taken in the courtroom than in a live trial
(109 see sig. diff.) (93 see no sig. diff.)
 - 142 less confusing in the courtroom than during a live trial
(74 see sig. diff.) (67 see no sig. diff.)
 - 123 not as anxiety-provoking for the witnesses as in a live trial
(73 see sig. diff.) (46 see no sig. diff.)
 - 137 easier for jurors to concentrate on testimony than in a live trial
(73 see sig. diff.) (62 see no sig. diff.)
 - 1 other
 - 17 no response
15. Please indicate which of these factors, if any, you feel are disadvantages in video-taped trials. (Check all the answers that apply).
- 109 less emotional for jurors than in a live trial
(51 see sig. diff.) (57 see no sig. diff.)
 - 19 more confusing for jurors than in a live trial
(16 see sig. diff.) (3 see no sig. diff.)
 - 66 more difficult for the jurors to concentrate than in a live trial
(45 see sig. diff.) (20 see no sig. diff.)
 - 49 jurors cannot be as confident about their decisions as in a live trial
(37 see sig. diff.) (11 see no sig. diff.)
 - 8 other
 - 96 no response

16. Please comment on the courtroom atmosphere in this trial compared with other trials at which you served as a juror. (If you have not previously served as a juror, please make a comparison with what you feel courtroom atmosphere ought to be.)
- 122 same or better
22 worse
32 other
102 no response
17. In your opinion, did the absence of the judge from the courtroom affect the trial in any way?
- 14 Yes
261 No
3 No response
- If so, how?
18. In your opinion as a juror, do you think there is any significant difference between a live trial and a videotaped trial?
- 143 Yes (62 male, 80 female)
122 No (70 male, 52 female)
13 No response (5 male, 7 female)
- If so, please comment on the difference or differences.
19. If you were to be involved in a civil court case similar to the case you served on and were offered the choice of a live or a videotaped trial, which would you choose?
- Why would you make this choice?
- 69 Live (20 male, 49 female) (55 see sig. diff.)
170 PRVTT (92 male, 77 female) (80 see sig. diff.)
11 No difference (8 male, 3 female) (3 see sig. diff.)
12 Undecided (6 male, 6 female) (4 see sig. diff.)
16 No response (12 male, 4 female) (1 sees sig. diff.)
20. If you were an accused in a criminal case, which form of trial would you choose?
- Why would you make this choice?
- 111 Live (37 male, 74 female) (81 see sig. diff.)
114 PRVTT (63 male, 50 female) (49 see sig. diff.)
9 No difference (9 male, 0 female) (3 see sig. diff.)
20 Undecided (13 male, 7 female) (6 see sig. diff.)
24 No response (15 male, 9 female) (5 see sig. diff.)
21. Age
22. Sex
- 137 Male
139 Female
2 No response
23. Occupation

24. Occupation of Spouse

| AGE | | OCCUPATION | |
|-------------|----|-------------------------|----|
| 18-20 | 2 | Prof, tech, kindred | 30 |
| 21-30 | 46 | Manager & admin, except | |
| 31-40 | 51 | farm | 13 |
| 41-50 | 66 | Sales workers | 8 |
| 51-60 | 68 | Clerical and kindred | 27 |
| 61-70 | 36 | Craftsmen, foremen, | |
| 71-80 | 3 | kindred | 32 |
| 81-90 | 2 | Operatives, except | |
| No response | 4 | transport | 17 |
| | | Transport equipment | |
| | | operators | 4 |
| | | Laborers, except farm | 15 |
| | | Farmers & farm managers | 2 |
| | | Farm laborers & foremen | 1 |
| | | Service workers, except | |
| | | household | 10 |
| | | Household workers | 2 |
| | | Housewives | 68 |
| | | Retired | 29 |
| | | Not working | 3 |
| | | No response | 17 |

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